

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45268
Docket No. SG-47374
24-3-NRAB-00003-220412**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Continuous claim on behalf of S. Dixon, for compensation of 2 hours and 40 minutes at his respective straight-time rate of pay each day worked on the temporary assignment, 10 hours at his respective straight-time rate of pay for each regular assigned work day he is denied the work opportunity, and his half time rate of pay for all hours worked on his scheduled rest days beginning on June, 2, 2021, continuing until the Claimant is returned to his regular position, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 13, 14, 15, and 17, when Carrier failed to offer the vacancy to the senior Class 1 Signalman on the gang and assigned the Claimant to the temporary position without properly compensating him. Carrier’s File No. 1758915, General Chairman’s File No. VGCS-13,14,180, BRS File Case No. 5419, NMB Code No. 300 - Contract Rules: Assignments/Bulletins.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was assigned to Signal Gang 2690, as a Skilled Signalman headquartered in Eastland, Texas. In this position, the Claimant worked ten-hour workdays, Tuesday – Tuesday with six consecutive rest days. Beginning June 2, 2021, the Carrier required the Claimant to fill a temporary Maintainer position on Gang 2611. The Maintainer position was a higher rated position than the Claimant’s regular Signalman position. The Maintainer position had a regular eight-hour schedule, Monday to Friday, with Saturday and Sunday rest days. The Claimant protected this position until July 31, 2021.

In a letter dated June 18, 2021, the Organization filed a continuing claim on behalf of the Claimant. The Carrier denied the claim in a letter dated August 16, 2021. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for final adjudication.

The Organization contends that the Carrier violated the controlling Agreement when it utilized the Claimant to fill a position on Gang 2611 and did not compensate him in accordance with the current Agreement provisions, in particular Rules 13 and 14. The Organization contends that the Claimant lost two hours and 40 minutes at his respective straight-time rate of pay each day he worked on the temporary assignment, 10 hours at his respective straight-time rate of pay for each regular assigned work day he was denied the work opportunities, and his half-time rate of pay for all hours worked on his scheduled rest days.

The Organization contends that the Carrier’s forcing the Claimant to leave his regular assignment to work a temporary vacancy from June 2, 2021 to July 31, 2021, deprived the Claimant of his 40-hour work week. The Organization contends that the Claimant’s seniority entitles him to the job that he holds by bulletin, as the Claimant did not exercise his seniority to the temporary vacancy.

The Organization contends that the Carrier’s continued violation of the Agreement required the Claimant to miss regular assigned workdays from his assigned position and he is entitled to ten hours of straight time for each forced rest day. The Organization contends that because the Claimant was forced to work on his

regularly assigned rest days, he is owed the additional half-time in accordance with Rule 15.

The Carrier contends that the Organization has failed to show that it violated the Agreement or that the Claimant is entitled to any additional compensation. The Carrier acknowledges that it transitioned the Claimant from his signalman's position to the maintainer position but contends that it properly compensated him for all hours worked, including overtime.

The Carrier contends that in his former assignment, the Claimant would have worked 350 straight time hours at \$33.68 per hour, while under his current temporary schedule, he worked 344 hours straight time and 52 hours overtime at \$37.14 per hour. The Claimant would have earned less compensation during the timeframe if he had worked his previous schedule. The Carrier contends that the Claimant earned more during his temporary vacancy and did not suffer a loss in compensation.

The Carrier contends that the provisions cited by the Organization were not intended to create a windfall for employees filling temporary vacancies, but to ensure that those employees were not shorted compensation. The Carrier contends that the Claimant was compensated correctly for all hours worked and was not shorted his 40-hour work week.

The parties agree that the Carrier has the right and authority to temporarily assign the Claimant to work as a Signal Maintainer rather than as a Signalman. However, the Organization asserts that while the Carrier has the right to temporarily reassign employees, there is a negotiated cost associated with that right.

Rule 14 – FILLING TEMPORARY VACANCY – of the controlling agreement provides,

- A. An employee, when sent away from his home station to fill a temporary vacancy for one day, will be paid in accordance with Rule 13A; if for more than one day, he will be paid in accordance with Rule 13B. While filling such vacancy, he will be paid for the hours worked at the established rate for the position, but at not less than his regular rate. If his regular position works in excess of eight (8) hours, he will be paid not less than if he remained on his regular position.**

The Organization asserts that because the Claimant was regularly assigned to work a ten-hour day, he must be compensated for the additional two hours each workday while temporarily assigned to an eight-hour position. But the clear and unambiguous language of Rule 14 A provides only that he be paid at not less than his regular rate and not less than if he remained on his regular position. The Claimant was compensated at the higher maintainer's rate and his total compensation was not less than if he had remained in his regular position. The Carrier did not violate this provision.

The Organization also contends that the Carrier violated Rule 13 – ROAD SERVICE, § B which reads,

- B. Employees sent away from home station and held out overnight will be allowed actual time for traveling or waiting during the regular working hours; in addition, travel or waiting time outside of regular hours will be paid for at the straight time rate, until the employee is released from duty at location where suitable eating and sleeping accommodations are available.**

The Organization contends that the Claimant was entitled to travel and waiting time under this rule, because he was forced to suspend work during what would have been his regular working hours. But there is no question that the Claimant worked all his newly-assigned hours and the Organization has not shown that the Claimant had travel or waiting time outside of these newly assigned hours.

Finally, the Organization contends that because the Claimant was forced to work on his previously-assigned rest days, he was entitled to compensation under Rule 15 - SERVICE PERFORMED ON REST DAYS OR HOLIDAYS,

- A. Work performed on assigned rest days and the following holidays shall be paid for at the rate of time and one-half on a minute basis with a minimum of three (3) hours...**

The Carrier responds that the Claimant did not perform work on the rest days associated with his temporary assignment, and thus is not entitled to any additional compensation. The Carrier's point is well-taken. The Organization has not offered any evidence showing that the Claimant performed work on the assigned rest days of the Signal Maintainer position. Therefore, he was not entitled to additional compensation under this provision.

As the moving party, the Organization bears the burden of showing a violation of the Agreement, but it has not presented sufficient evidence of a violation. The Claimant was properly compensated while in the temporary assignment.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of July 2024.